IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 1218 of 2001
(Old No. 85 of 1992)

1. State of U.P. through
Secretary, Public Works Department,
U.P. Lucknow.

2. Executive Engineer,
Provincial Division, Public Works Deptt.,
Lansdown, District Pauri Garhwal.
3. Assistant Engineer –III,
Provincial Division, Public Works Deptt.,
Lansdown, District Pauri Garhwal.

…… Appellants

Versus

Prem Singh S/o Sri Tala Singh,
C/o Sri M.S. Bhandari, Advocate
Ajabpur Khurd, District Dehradun.

…….. Claimant/ Respondent

Mr. R.C. Arya, learned counsel for the appellants.
None for the claimant/ respondent.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 30 of the Workmen's Compensation Act, 1923, is directed against the judgment and order dated 22 / 24.01.1992, passed by the Workmen's Compensation Commissioner, Dehradun, whereby he has awarded a sum of Rs. 36,570.70 paise, with 6% interest thereon as compensation to the claimant – respondent.

2) Brief facts of the case, are that the claimant – respondent was working as Beldar with Public Works

Department of the Government since March 1982. On 20.01.1990, while working on Haridwar – Badrinath pedestrianize road, a stone fell on him, causing injury to his left eye due to which he lost his eye sight of that eye. The claimant has alleged that he was 32 years of age at the time of the accident, and was getting Rs. 920/- per month as salary. It was further alleged by the claimant that he has suffered 40% disability and is entitled to compensation to the tune of Rs. 40,758/-.

3) The defendants (present appellants) contested the claim and filed their written statement, but admitted that Prem Singh (claimant) was their daily wages employee working as Beldar since 1982. His salary of Rs. 920.40 per month was also admitted. However, as to the age it was stated that the claimant was 34 years old. Factum of accident was also not denied in the written statement. However, in the written statement, it was pleaded that the injury had not been caused during the course of the employment.

4) Learned Workmen's Compensation Commissioner framed following four issues:

1. *Whether, the appellant is a 'workman' within the meaning of the Act?*
2. *Whether, accident arose out of or in the course of employment?*
3. *Whether, the opposite party is liable to pay such compensation, as claimed?*
4. *Whether, the opposite party is liable to pay penalty, interest and medical expenses?*

5) Both the parties adduced their evidence before the Workmen's Compensation Commissioner, who after hearing them, awarded a sum of Rs. 28,131/- as amount of compensation with 30% penalty i.e. Rs. 8439.40 paise, totalling Rs. 36,570.70 paise, with 6% interest thereon. Aggrieved by said order of the Workmen's Compensation Commissioner, this appeal has been preferred.

6) I heard learned counsel for the parties and perused the record.

7) Admittedly, claimant – respondent was Belwar with Public Works Department from March 1982. It is also not disputed that he received injuries on 20.01.1990 and lost his left eye, due to the said accident. It is also admitted that the salary of the claimant – respondent was Rs. 920/- per month. As such, as far as the issue No. 1 is concerned, the claimant is certainly a workman within the meaning of Workmen's Compensation Act and the finding of the Workmen's Compensation Commissioner is correct and in accordance with law. Now, it is to be seen whether, the injury was caused to the workman during the course of employment or not? This fact also, apart from the plaintiff's evidence, gets corroboration from the statement of the witness produced by the defendants themselves. Defendant witness, Deep Joshi himself has admitted in his statement that on 20th of January 1990, the claimant was on duty and was discharging not only the functions of Beldar but also that of the mate. This witness himself has admitted that at the time of breaking stone, between 11:00 and 11:30 A.M., the claimant received the injuries. As such, the

finding of the Workmen's Compensation Commissioner as to the fact that the injuries were received by the workman during the course of employment, are well founded.

8) On behalf of the appellant, it is argued that the Workmen's Compensation Commissioner has committed error in awarding penalty over and above the compensation amount awarded by him. From the perusal of the impugned judgment, it appears that the penalty has not been awarded without any reason. Rather, in view of the Supreme Court's judgment reported in the case of ***Pratap Narain Singh Deo Vs. Sriniwas Sabata and another; (1976) 1 S.C.C. 289,*** and considering the fact that the employer failed to pay any compensation to the workman for which the claimant was unnecessarily dragged to the litigation, 30% penalty has been imposed. In the above facts and circumstances, the penalty imposed cannot be said to be unjust or improper. Therefore, I see no error of law or that of fact in the impugned judgment and order.

9) Accordingly, this appeal is liable to be dismissed. The appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt. March 08,2006.
H. Negi